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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

COMMUNITY ASSOCIATION FOR
RESTORATION OF THE
ENVIRONMENT, INC., a
Washington non-profit corporation;
FRIENDS OF TOPPENISH CREEK,
a Washington non-profit corporation;
et al.,

Plaintiffs,

v.

MAJESTIC FARM, LLC, a
Washington limited liability
company; NICHOLAS
STRUIKMANS, an individual; and
JANIE STRUIKMANS, et al.,

Defendants.

NO. 1:20-cv-03046-TOR

STIPULATED PROTECTIVE
ORDER

Honorable Thomas O. Rice

STIPULATED PROTECTIVE ORDER - 1
10239-0284 Stipulated Protective Order.docx
Case No. 1:20-cv-03046-TOR

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1 BEFORE THE COURT is the parties' Stipulated Protective Order. Pursuant
2 to Federal Rule of Civil Procedure 26, and it appearing to the Defendants that
3 discovery in the above-captioned matter will involve the disclosure of confidential
4 information, it is hereby stipulated by and between the Parties through their
5 respective counsel and ordered that the following Protective Order be entered to give
6 effect to the terms and conditions set forth below.
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9 1. Introduction and Scope. This Protective Order shall govern any and
10 all manner and means of discovery, including entry onto land or premises, and
11 inspection of books, computer records, documents, electronic files, testimony,
12 information and tangible things, furnished by any party or non-party, that the
13 Designating Party designates as CONFIDENTIAL pursuant to Paragraph 4
14 because it contains any trade secret, personal or other confidential research,
15 development, marketing, technical, business, or financial information that has not
16 been made public, subject to protection under the Federal Rules of Civil Procedure.
17 This designation shall apply regardless of the form in which the discovery material
18 is kept or maintained and extends to any testimony or documents, including without
19 limitation exhibits, copies, notes, abstracts, summaries, or analyses that reflect
20 discovery material.
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1 2. Limitation of Protective Order. This Protective Order is not intended
2 to address discovery objections to produce, answer, or respond on the grounds of
3 attorney-client privilege or work product immunity nor to preclude either party
4 from seeking further relief or protective orders from the Court as may be
5 appropriate under the Federal Rules of Civil Procedure.
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7 3. Confidentiality of Certain Documents or Information. A party or
8 nonparty that produces information may claim confidential treatment for documents
9 and information (and any portions or summaries thereof) that the party or nonparty
10 reasonably believes constitutes or contains material that is particularly sensitive in
11 nature, including but not limited to trade secrets, processes, operations, research,
12 technical or development information or apparatus, production, financial, marketing,
13 sales, shipments, or other information considered by the designating party to be
14 commercially or personally sensitive, confidential, and/or proprietary to the person or
15 the individual facility.
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19 4. “CONFIDENTIAL” Designation. Any party or nonparty that
20 produces information in response to a discovery demand may identify confidential
21 documents or information by designating such documents or information as
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1 “CONFIDENTIAL.” Such party or nonparty shall be referred to as the
2 “designating party.”
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4 5. Confidentiality of Party’s Own Documents. This Protective Order has
5 no effect upon, and shall not apply to, a party’s use or disclosure of its own
6 “CONFIDENTIAL” information for any purpose, insofar as such confidentiality is
7 reasonably maintained. Such disclosure shall not waive the protection of this
8 Protective Order and shall not entitle other parties or their attorneys to disclose
9 such information in violation of it.
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11 6. Prior or Public Knowledge. Nothing contained herein shall impose
12 any restrictions on the use or disclosure by a party of documents or information
13 designated “CONFIDENTIAL” that was obtained lawfully by such party
14 independently of any proceedings in this action, or that:
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17 a. was already known to such party by lawful means prior to
18 acquisition from, or disclosure by, the other party in this action;
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20 b. was already in the public realm;

21 c. is or becomes publicly known through no fault or act of such
22 party;
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1 d. is rightfully received by such party from a third party which has
2 authority to provide such information without restriction as to disclosure; or
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4 e. is independently developed by the recipient of the information
5 without use of or reference to the information.

6 7. Designation. The designation of information as “CONFIDENTIAL”
7 for purposes of this Protective Order shall be made in the following manner by the
8 party or nonparty seeking protection (“designating party”), and shall further be
9 consistent with any applicable Local Rule of the United States District Court for
10 the Eastern District of Washington:
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13 a. In the case of documents or discovery responses, by affixing the
14 label “CONFIDENTIAL” at the time such documents are produced or served, or as
15 soon thereafter as the party or nonparty seeking protection becomes aware of the
16 confidential nature of the information disclosed and sought to be protected
17 hereunder. If such documents were produced by a nonparty, any party seeking
18 protection other than the producing nonparty must also provide written notice to all
19 parties of the relevant document numbers or other reasonable identification of the
20 relevant information within ten (10) calendar days of receiving the information;
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1 b. In the case of depositions: (i) by a statement on the record, by
2 counsel, during such deposition that the entire transcript or a portion thereof shall be
3 designated as “CONFIDENTIAL” hereunder; or (ii) by written notice of such
4 designation to counsel for all other parties and the court reporter within ten (10)
5 calendar days following the receipt of the transcript of the deposition by the
6 designating party. During a deposition, the deponent or his counsel, or any other
7 counsel of record, may invoke the provisions of this Protective Order in a timely
8 manner, giving adequate oral warning to counsel for the party or nonparty that the
9 testimony about to be given is deemed “CONFIDENTIAL” by the designating party.
10 The designating party shall have the right to exclude any person not entitled under
11 this Protective Order to receive the “CONFIDENTIAL” information from the
12 deposition. Unless designated as “CONFIDENTIAL,” any confidentiality is waived
13 after the expiration of the ten (10) day written notice period discussed above, under
14 subpart (ii) of this paragraph. The parties may modify this procedure for any
15 particular deposition or proceeding through agreement on the record at such
16 deposition or proceeding or otherwise by written stipulation, without further order
17 of the Court. If any information designated as “CONFIDENTIAL” is used during
18 the course of a deposition, that portion of the deposition record reflecting such
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1 “CONFIDENTIAL” information shall be so labeled, and access thereto shall be
 2 limited pursuant to the other terms of this Protective Order. The time required to
 3 address questions of claimed confidentiality shall not be counted against the
 4 deposition time available to the non-designating party taking the deposition. The
 5 court reporter shall account for the amount of time it takes to designate documents
 6 or testimony as confidential; and
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 9 c. In the case of hearing testimony or argument, a party may
 10 disclose “CONFIDENTIAL” information upon consent of the designating party or
 11 permission of the Court. Should the designating party object to the disclosure of
 12 “CONFIDENTIAL” information, the designating party shall make the appropriate
 13 Motion to the Court pursuant to any applicable local rule.
 14

15 8. Access To “CONFIDENTIAL” Information. Information designated
 16 as “CONFIDENTIAL” shall be used solely in connection with and for purposes of
 17 this litigation between the parties. Information designated as “CONFIDENTIAL,”
 18 or copies or extracts therefrom and compilations and summaries thereof, may be
 19 disclosed, summarized, described, characterized, or otherwise communicated or
 20 made available in whole or in part only to the persons identified in the
 21 subparagraphs below. It is understood, however, that counsel for a party may give
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1 advice and opinions to his or her client based on his or her evaluation of
2 information designated as “CONFIDENTIAL” produced by the opposing party
3 provided that such rendering of advice and opinions shall not directly or indirectly
4 reveal the content of such information except by prior agreement with opposing
5 counsel.
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8 a. Parties’ counsel of record in this action and other attorneys,
9 paralegals, and other staff at such counsel’s law firms.

10 b. One (1) designated individual representative, separate from any
11 counsel of record, from each named party in this action. If necessary to make
12 decisions regarding this litigation, such designated individual representative may
13 provide CONFIDENTIAL information to an executive decisional body of a named
14 party, provided (1) the party provide five (5) days advance notice to the opposing
15 party or parties; (2) members of the decisional body receive, sign, and agree to be
16 bound by a copy of this Protective Order; (3) such provision of CONFIDENTIAL
17 information is not more than reasonably necessary to make such decision. This
18 subparagraph is not intended to preclude any counsel of record, including counsel of
19 record who are members of the named parties, from receiving CONFIDENTIAL
20 information pursuant to subparagraph a.
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1 c. Consultant experts as defined in Paragraph 10 herein and
2 pursuant to the provisions regarding consultant experts herein;

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4 d. The Court pursuant to Paragraphs 16 and 17 herein;

5 e. To any person designated by the Court in the interests of justice,
6 upon such terms as the Court deems proper;

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8 f. Court reporters employed in connection with this action;

9 g. Graphics or design services retained by counsel of record for a
10 party for purposes of preparing demonstrative or other exhibits for deposition, trial
11 or other court proceedings in this action, subject to and conditioned upon compliance
12 with Paragraph 12 herein;

14 h. Non-technical jury or trial consulting services retained by
15 counsel of record for a party, database managers and the like, subject to and
16 conditioned upon compliance with Paragraph 12 herein;

18 i. Insurers of parties to this action; and

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20 j. To private mediators, arbitrators, and their staff to assist in the
21 resolution of this matter conditioned upon compliance with Paragraph 12 herein.

22 9. Custody of Designated Materials. All “CONFIDENTIAL”
23 information covered by this Stipulation and Protective Order shall be kept in secure
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1 facilities at the offices of persons permitted to see such material and information
2 as set forth in Paragraphs 8 of this Stipulation and Protective Order.

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4 10. Consultant Expert Defined. For purposes of this Order, a consultant
5 expert shall be defined as a person, and his or her secretarial or similar assistants
6 to whom it is necessary to disclose "CONFIDENTIAL" information for the
7 purposes of this litigation, who is neither an employee or member of a party nor
8 anticipated to become an employee or member, and who is retained solely as a bona
9 fide consultant expert for purposes of this litigation, whether full or part time, by
10 or at the direction of counsel of record for a party. A consultant expert may be a
11 testifying expert or a non-testifying expert. Any consultant expert may be
12 designated as an expert witness under the Federal Rules of Civil Procedure.

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14 a. Procedure for Consultant Expert Access To Confidential
15 Information. The party seeking to have a Consultant Expert, as defined in Paragraph
16 10 herein, access information designated as CONFIDENTIAL shall require such
17 Consultant Expert to sign a copy of the declaration attached hereto as Exhibit A prior
18 to such access. On the date provided by rule and case schedule for disclosure of
19 expert witnesses, the party who has disclosed information designated as
20 CONFIDENTIAL to any Consultant Expert shall provide to counsel for all other
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1 parties by electronic transmission or facsimile (1) a copy of all declarations
2 completed and signed by Consultant Experts who are then designated as testifying
3 experts.
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5 11. Procedure For Access To Confidential Information By Individuals
6 Associated with Named Parties. All persons listed in Paragraph 8(b) above may
7 be given access to information designated as “CONFIDENTIAL,” provided that
8 they first confirm their understanding and agreement to abide by the terms of this
9 Protective Order by completing and signing a copy of the declaration attached
10 hereto as Exhibit A. This declaration shall be served in a timely manner on the
11 opposing party.
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14 12. Procedure for Access To Confidential Information Other Than By
15 Consultants. All persons listed in Paragraphs 8(e), 8(g), 8(h) and 8(i) above may
16 be given access to information designated as “CONFIDENTIAL”, provided that
17 they first confirm their understanding and agreement to abide by the terms of this
18 Protective Order by completing and signing a copy of the declaration attached hereto
19 as Exhibit A.
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22 13. Use by Witness Who Received Or Authored. Notwithstanding the
23 Paragraphs above, any person may be examined as a witness at trial or during a
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1 deposition concerning any information designated as “CONFIDENTIAL” which
2 that person had authored or been clearly identified as an addressee or copy recipient
3 prior to and apart from this action. If a document or testimony makes reference to
4 the actual or alleged statements or conduct of a deponent who is a potential witness
5 and revealing information designated as CONFIDENTIAL in a deposition is
6 necessary to understand such statements or conduct, counsel may reveal the
7 document or testimony designated as CONFIDENTIAL to the potential witness
8 during the deposition without waiving the CONFIDENTIAL designation. Before
9 such disclosure, the witness shall sign Exhibit A and agree to be bound by the terms
10 of this Order.
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14 14. Challenge to Confidentiality Designation. If, within sixty (60)
15 calendar days from the date that a “CONFIDENTIAL” designation is made, a party
16 contends that the designating party has unreasonably or incorrectly designated
17 certain documents or information as “CONFIDENTIAL,” the objecting party may
18 challenge the designation. A challenge may be made by serving on counsel for all
19 parties a notice of objection, which shall identify with reasonable particularity the
20 items as to which the designation is challenged, state the basis for each challenge,
21 and propose a new designation for each item. The challenge must specifically state
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1 that the designating party has ten (10) calendar days to respond to the challenge. The
2 challenged material shall continue to be deemed CONFIDENTIAL unless, within
3 ten (10) calendar days after service of the notice of objection, the designating party
4 fails to serve an opposing notice to maintain the original "CONFIDENTIAL"
5 designation. If the party challenging the designation remains dissatisfied, it may
6 request relief from the Court, with confidential portions thereof to be kept under seal,
7 requesting that specifically identified documents, information, and/or deposition
8 testimony be excluded from the provisions of this Stipulation and Protective Order.
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10 In responding to such a Motion, the designating party shall have the burden of
11 proving that the challenged documents or information are rightfully afforded
12 protection as "CONFIDENTIAL." Furthermore, this paragraph shall not preclude
13 any party from challenging a confidentiality designation as part of a particular
14 pretrial motion, pretrial document designation or at trial.
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18 15. Filing Confidential Information. To the extent that a party or nonparty
19 believes it necessary to submit "CONFIDENTIAL" information in a document to
20 be filed with the Court, that party or nonparty shall comply with the requirements
21 for filing material under seal in the United States District Court for the Eastern
22 District of Washington, including the then-current Procedures for the Filing of
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1 Sealed and Ex Parte Documents for Civil Cases. If such information is attached to
2 court filings, “compelling reasons” must be shown to seal records attached to a
3 dispositive motion and “good cause” must be shown to seal records attached to a
4 non-dispositive motion. *Kamakana v. City and County of Honolulu*, 447 F.3d 1172,
5 1178-80 (9th Cir. 2006), or any applicable subsequent legal standard.
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8 16. Use of Confidential Information in Court Proceedings. In the event that
9 any information designated as “CONFIDENTIAL” is used in any court proceeding
10 in this action or any appeal therefrom, such information shall not lose its status as
11 “CONFIDENTIAL” through such use. Counsel for the parties shall confer on such
12 procedures as are necessary to protect the confidentiality of any information used in
13 the course of any court proceedings, and shall incorporate such procedures in a
14 document to be filed with the court, as is appropriate.
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17 17. Counsel Bound by Protective Order. All counsel for the parties,
18 including but not limited to employees of counsel’s law firms, who have access to
19 information designated as “CONFIDENTIAL” shall be bound by this Order and
20 submit to the jurisdiction of this Court for purposes of enforcing this Order.
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1 18. No Prejudice. Entering into, agreeing to, and/or producing or receiving
2 information designated as “CONFIDENTIAL” or otherwise complying with the
3 terms of this Protective Order shall not:
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5 a. Prejudice in any way the rights of a party to seek a determination
6 by the Court whether any information should be subject to the terms of this
7 Protective Order;
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9 b. Prejudice in any way the rights of a party to petition the Court
10 for a further protective order relating to any purportedly “CONFIDENTIAL”
11 information;
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13 c. Prevent the parties to this Protective Order from agreeing in
14 writing or on the record during a deposition or hearing in this action to alter or waive
15 the provisions or protections provided for herein with respect to any particular
16 information.
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18 19. Inadvertent Production of Confidential Information. If a party
19 inadvertently produces “CONFIDENTIAL” information without marking or orally
20 designating it as such on the record, it may be disclosed to others until the receiving
21 party becomes aware of the error. As soon as the receiving party becomes aware of
22 the inadvertent production, the information must be treated as if it had been timely
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1 designated under this Protective Order, and the receiving party must endeavor in
2 good faith to obtain all copies, notes and synopses of the document which it
3 distributed or disclosed to persons not authorized to access such information by
4 Paragraphs 8 and 9 above, as well as any copies, notes and synopses made by such
5 persons.
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8 20. Modification. This Protective Order may be modified and any matter
9 related to it may be resolved by written agreement of the parties, or upon motion and
10 entry of an Order of the Court.
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12 21. Sanctions. The parties agree to be bound by the terms of this Protective
13 Order pending its entry by the Court, or pending the entry of an alternative thereto
14 which is satisfactory to all parties, and any violation of its terms shall be subject to
15 sanctions as the Court deems appropriate. Any party seeking any enforcement of
16 this Protective Order in any jurisdiction or tribunal by injunction, temporary
17 restraining order, or otherwise, shall not be required to post a bond.
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19 22. Final Disposition. The provisions of this Protective Order shall, absent
20 written permission of the producing party or further order of the Court, continue to
21 be binding throughout and after the conclusion of this action, including without
22 limitation any appeals therefrom. Within sixty (60) calendar days after receiving
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1 notice of the entry of an order, judgment or decree finally disposing of this action,
2 including any appeals therefrom, all persons having received information designated
3 “CONFIDENTIAL” hereunder shall return such information to counsel for the
4 producing party, or shall certify destruction thereof, including copies, and synopses
5 and related notes incorporating such information to the extent reasonable and
6 consistent with other language in this Protective Order. Counsel described in
7 Paragraph 8(a) herein shall be entitled to retain court papers, deposition and trial
8 transcripts, and attorney work product (including court papers, transcripts, and
9 attorney work product that contain information designated as “CONFIDENTIAL”)
10 provided that such counsel, and employees of such counsel, shall not disclose any
11 such information designated as “CONFIDENTIAL” contained in such court papers,
12 transcripts, or attorney work product to any person or entity except pursuant to court
13 order or a written agreement with the producing party of the information. All
14 “CONFIDENTIAL” information returned to the parties or their counsel by the Court
15 likewise shall be returned or otherwise disposed of in accordance with this
16 Paragraph. This Protective Order shall be construed consistent with LR 79.1.

22 23. Subpoena of Confidential Information in Another Action. If any party
23 (a) is subpoenaed in another action or proceeding, (b) is served with a demand in
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1 another action or proceeding to which it is a party, or (c) is served with any other
2 legal process by one not a party to this action, seeking information which was
3 designated as "CONFIDENTIAL" by someone other than that party, the party shall
4 give written notice within seven (7) calendar days of receipt of such subpoena,
5 demand, or legal process, to those who designated the information
6 "CONFIDENTIAL," and shall refuse to produce the information designated as
7 "CONFIDENTIAL." Should the person seeking access to the information take
8 action against the party or anyone else covered by this Protective Order to enforce
9 such a subpoena, demand or other legal process, the party shall respond by setting
10 forth the existence of this Protective Order. Nothing herein shall be construed as
11 requiring the party or anyone else covered by this Protective Order to challenge or
12 appeal any order requiring production of information covered by this Protective
13 Order, or to subject itself to any penalties for noncompliance with any legal process
14 or order, or to seek any relief from this Court.

19 24. Non-Parties to This Action. Any non-party producing documents,
20 tangible things, or testimony in this action who may reasonably be expected to desire
21 confidential treatment therefor may designate such documents, tangible things, or
22 testimony confidential pursuant to this Protective Order.
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1 DATED this 11th day of September, 2020.

2
3 PREG O'DONNELL & GILLETT PLLC

4 By /s/ David S. Cottnair

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21 **IT IS SO ORDERED.** The District Court Clerk is directed to enter this Order
22 and provide copies to counsel.

23 **DATED September 15, 2020**



26 
27 **Honorable Thomas O. Rice**
28 **United States District Judge**